

September 30, 2013

Modified upon denial of rehearing November 5, 2013

No. 1-11-3080

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
v.	)	
	)	No. 06 CR 20388
THOMAS SHAW,	)	
	)	
Defendant-Appellant.	)	Honorable
	)	Maura Slattery-Boyle
	)	Judge Presiding.

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JUSTICE SIMON delivered the judgment of the court.  
Presiding Justice Quinn and Justice Pierce concurred in the judgment.

**ORDER**

¶ 1 *HELD:* The trial court did not err by accepting defendant's waiver of his right to counsel during the proceedings on his motion to withdraw his guilty plea and vacate his sentence without first admonishing him pursuant to Rule 401(a) because the court was not required provide defendant with Rule 401(a) admonitions. Three of defendant's convictions for first degree murder must be vacated pursuant to the one-act, one-crime doctrine because all four counts of murder alleged against defendant arise from the murder of the same victim.

¶ 2 Defendant Thomas Shaw entered a plea of guilty to the offense of first degree murder and was sentenced to natural life imprisonment. On appeal, defendant contends that the trial court erred by failing to admonish him pursuant to Illinois Supreme Court Rule 401(a) (eff. July 1, 1984) prior to accepting his waiver of counsel during the proceedings on his motion to withdraw his guilty plea and vacate his sentence and that his four murder convictions violate the one-act, one-crime doctrine. For the reasons that follow, we vacate three of defendant's convictions for first degree murder and affirm in all other respects.

¶ 3 BACKGROUND

¶ 4 Defendant pleaded guilty to four counts of first degree murder arising from the murder of Bernice Gonzalez-Martinez. The trial court accepted defendant's guilty plea and sentenced him to natural life imprisonment. After sentencing defendant, the court admonished him pursuant to Illinois Supreme Court Rule 605(b) (eff. Oct. 1, 2001) and advised him that an attorney would be appointed to assist him in preparing a motion to withdraw his guilty plea or vacate his sentence if he could not afford one. Defendant filed a *pro se* motion to withdraw his plea and vacate his sentence and initially agreed to the appointment of counsel to represent him in the proceedings on his motion. Defendant, however, subsequently informed the court that he was not accepting the representation of appointed counsel and that he wanted to represent himself and proceed *pro se*. The court then conducted a hearing at which defendant reiterated that he wanted to represent himself and, following argument, denied the motion.

¶ 5 ANALYSIS

¶ 6 Defendant contends that the court committed reversible error by accepting his waiver of

his right to counsel without first admonishing him pursuant to Rule 401(a) and thereby failed to ensure that his waiver of counsel was given knowingly and intelligently. The State responds that the court did not err because it was not required to admonish defendant pursuant to Rule 401(a) prior to accepting his waiver of counsel. As the question presented in this appeal concerns the proper interpretation of a supreme court rule, we will review defendant's claim *de novo*. *People v. Suarez*, 224 Ill. 2d 37, 41-42 (2007).

¶ 7 A defendant is entitled to the representation of counsel at all critical stages of a criminal proceeding and a waiver of that right must be clear and unambiguous. *People v. Burton*, 184 Ill. 2d 1, 21-22 (1998). Supreme Court Rule 605(b) (eff. Oct. 1, 2001) provides that upon the entry of a guilty plea, the court must provide the defendant with a number of admonitions concerning how to perfect an appeal. Among other things, the court must advise the defendant that, if he is indigent, counsel will be appointed to assist him with the preparation of a postplea motion to withdraw his guilty plea or vacate his sentence. Ill. S. Ct. R. 605(b)(5) (eff. Oct. 1, 2001). The defendant automatically triggers his right to the assistance of counsel when he informs the court that he wishes to withdraw his plea (*People v. Edwards*, 197 Ill. 2d 239, 256 (2001)), and the court must then appoint an attorney unless the defendant affirmatively, knowingly, and intelligently waives the appointment of counsel (*People v. Hinton*, 362 Ill. App. 3d 229, 232-33 (2005)). In this case, defendant does not challenge the sufficiency of the court's Rule 605(b) admonitions but, instead, asserts that the court erred by failing to admonish him pursuant to Rule 401(a) prior to accepting his waiver of appointed counsel.

¶ 8 Rule 401(a) provides that:

"The court shall not permit a waiver of counsel by a person accused of an offense punishable by imprisonment without first, by addressing the defendant personally in open court, informing him of and determining that he understands the following:

(1) the nature of the charge;

(2) the minimum and maximum sentence prescribed by law, including, when applicable, the penalty to which the defendant may be subjected because of prior convictions or consecutive sentences; and

(3) that he has a right to counsel and, if he is indigent, to have counsel appointed for him by the court." Ill. S. Ct. R. 401(a) (eff. July 1, 1984).

"The purpose of Rule 401(a) is to ensure that a waiver of counsel is knowingly and intelligently made" (*People v. Haynes*, 174 Ill. 2d 204, 241 (1996)), and the scope of Rule 401(a) is defined by the rule's plain language (*People v. Campbell*, 224 Ill. 2d 80, 87 (2006)).

¶ 9 Rule 401(a), by its own terms, only applies to a person "accused of an offense punishable by imprisonment." Ill. S. Ct. R. 401(a) (eff. July 1, 1984). In this case, defendant waived the representation of appointed counsel during the proceedings on his postplea motion to withdraw his guilty plea and vacate his sentence. At that time, defendant was not accused of an offense punishable by imprisonment because he had already been convicted of first degree murder by virtue of the court's earlier acceptance of his guilty plea and had been sentenced to natural life imprisonment for having committed that crime. As such, the court was not required to admonish defendant pursuant to Rule 401(a) because Rule 401(a) does not apply to defendant's waiver of

counsel. As this court pointed out in *People v. Young*, 341 Ill. App. 3d 379, 387 (2003), it would have been useless for the trial court to inform defendant of the nature of the charge of first degree murder and the possible sentence because defendant was not facing any charges and had already been sentenced. In addition, it would have been useless to advise defendant that he had a right to the appointment of counsel because defendant had already been advised of that right pursuant to Rule 605(b)(5) and counsel had already been appointed to represent him. Accordingly, the court did not err by accepting defendant's waiver of appointed counsel without first admonishing him pursuant to Rule 401(a) because no such admonitions were required.

¶ 10 In reaching that conclusion, we have considered *People v. Ames*, 2012 IL App (4th) 110513, and *People v. Hinton*, 362 Ill. App. 3d 229 (2005), cited by defendant, and find them distinguishable from this case. In *Ames*, 2012 IL App (4th) 110513, ¶ 21, the trial court required the defendant to represent himself at a hearing on a petition to revoke his sentence of supervision following the withdrawal of two appointed attorneys. The hearing resulted in a finding that the defendant violated the terms of his supervision order, the revocation of his supervision, and a resentencing to 18 months' probation, 60 days of which had to be served in jail. *Id.*, ¶¶ 21-22. This court determined that the case involved a waiver of counsel by the defendant's conduct and held that the trial court committed reversible error by failing to admonish the defendant pursuant to Rule 401(a) prior to finding that he had waived counsel through his conduct. *Id.*, ¶¶ 35-38. Unlike in *Ames*, where 401(a) admonitions were applicable because the defendant had to defend himself against charges that he violated his supervision order and faced the risk of imprisonment on the basis of those allegations, in this case defendant was not facing any charges or the risk of

imprisonment on the basis of any such charges during the proceedings on his motion to withdraw his guilty plea and vacate his sentence. Also, this court did not address Rule 401(a) in *Hinton*, 362 Ill. App. 3d at 234, as this court only held that a defendant's pretrial waiver of counsel did not constitute a knowing waiver of the assistance of counsel in preparing a postplea motion and, in any event, counsel was appointed to represent defendant in the proceedings on his motion to withdraw his guilty plea and vacate his sentence in this case and defendant clearly and expressly waived his right to counsel two times after counsel had been appointed to represent him.

¶ 11 In his petition for rehearing, defendant asserts that Rule 401(a) admonitions were required in this case pursuant to the Second District's decision in *People v. Thomas*, 335 Ill. App. 3d 261 (2002), in which the appellate court determined that the trial court erred by failing to admonish the defendant under Rule 401(a) prior to accepting the defendant's waiver of counsel during the proceedings on his motion to vacate his guilty plea. Initially, defendant did not cite to *Thomas* or present argument as to its relevance to this case in his appellant's brief or reply and points not argued in the appellant's brief are forfeited and shall not be raised in the reply brief or on petition for rehearing (Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); see also Ill. S. Ct. R. 367(b) (eff. Dec. 29, 2009) (a petition for rehearing shall include "proper reference to the particular portion of the record and brief relied upon" in support of the points argued)). Regardless, the court in *Thomas* did not directly address the issue of whether a trial court must provide a defendant who waives the assistance of counsel during the proceedings on his motion to withdraw his guilty plea with Rule 401(a) admonitions. Instead, the appellate court only considered whether the trial court substantially complied with Rule 401(a), and it does not appear that the parties contested the

applicability of Rule 401(a). *Thomas*, 335 Ill. App. 3d at 263-65. As such, the *Thomas* decision does not affect our determination that Rule 401(a) admonitions were not required in this case, as our determination is based on the plain language of Rule 401(a) and supported by the reasoning set forth in *Young*, 341 Ill. App. 3d at 387, which directly addressed the applicability of Rule 401(a) in a substantially similar situation.

¶ 12 Defendant also contends that his four convictions for first degree murder violate the one-act, one-crime doctrine because all four counts related to the same act of murder of the same victim. Although defendant failed to preserve this issue for appeal by failing to include it in his postplea motion, we may nonetheless review his claim under the second prong of the plain-error doctrine because the potential for an unwarranted conviction and sentence threatens the integrity of the judicial process. *People v. Carter*, 213 Ill. 2d 295, 299 (2004). The one-act, one-crime doctrine provides that a defendant may not be convicted of multiple crimes if they are based on the same physical act. *People v. Miller*, 238 Ill. 2d 161, 165 (2010). Thus, when only one person has been murdered, the defendant can only be convicted of one murder. *People v. Cardona*, 158 Ill. 2d 403, 411 (1994). Here, three of defendant's convictions for first degree murder violate the one-act, one-crime doctrine because all four counts of murder arise from defendant's murder of the same victim.

¶ 13 CONCLUSION

¶ 14 Accordingly, we vacate defendant's convictions for first degree murder based on the murder charges set forth in counts two through four and affirm the judgment of the circuit court of Cook County in all other respects.

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¶ 15 Affirmed in part and vacated in part.